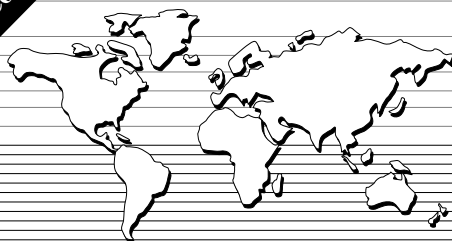




U.S. Department of the Treasury
Office of Foreign Assets Control



LIBYA

What You Need To Know About The U.S. Embargo

An overview of the Libyan Sanctions Regulations -- Title 31 Part 550 of the U.S. Code of Federal Regulations

■ **INTRODUCTION** - The Libyan Sanctions Regulations, authorized under the International Emergency Economic Powers Act and the International Security and Development Cooperation Act of 1985, established economic sanctions against Libya in January 1986. Citing terrorist attacks against the Rome and Vienna airports in December 1985, former President Reagan emphasized that he had authorized the sanctions in response to Libya's repeated use and support of terrorism against the United States, other countries, and innocent persons. The Regulations are still in force and affect all U.S. citizens and permanent residents wherever they are located, all people and organizations physically in the United States, and all branches of U.S. organizations throughout the world. They are administered by the U.S. Treasury Department's Office of Foreign Assets Control.

Criminal penalties for violating the sanctions range up to 10 years in prison, \$500,000 in corporate and \$250,000 in individual fines. In addition, civil penalties of up to \$11,000 per violation may be imposed administratively.

This fact sheet is a broad overview of the Libyan Sanctions Regulations.

■ **BUYING FROM LIBYA** - Goods or services of Libyan origin may not be imported into the United States either directly or through third countries. There are two exceptions: (1) Libyan merchandise up to \$100 in value in non-commercial quantities may be brought into the United States either for strictly personal use as accompanied baggage by an authorized traveler or sent as a gift to a person in the United States and (2) qualifying informational material may be imported without restriction.

■ **SELLING TO LIBYA** - Except for informational materials, such as books, magazines, films, and recordings and donated articles such as food, clothing, medicine, and medical supplies intended to relieve human suffering, and the licensed export of agricultural commodities and products, medicine and medical equipment, no goods, technology, or services may be exported from the United States to Libya, either directly or through third countries. No U.S. bank or foreign branch of a U.S. bank may finance, or arrange offshore financing for, third-country trade transactions where Libya is known to have an interest in the trade as its ultimate beneficiary. The U.S. Treasury Department takes the view that arranging transactions which ultimately benefit Libya (for example, brokering third-country sales of Libyan crude oil or transportation for Libyan cargo) constitutes an exportation of brokerage services to Libya and a dealing in Libyan governmental property in violation of the Regulations. Banks should be careful, for example, not to become involved in transactions relating to shipments to or from South Korea involving ultimate delivery of merchandise to the Great Man-Made River Project in Libya. The only areas of trade that may involve Libya and still be permissible are: (1) the sale of parts and components to third countries, where the U.S. goods will be "substantially transformed" into new and different articles of commerce prior to shipment to Libya, and (2) the sale of goods which come to rest in the inventory of a third-country distributor whose sales are not predominantly to Libya.

Even the first of those exceptions is not available if the finished product of the third country is destined for use in any aspect of the Libyan petroleum or petrochemical industries.

■ **SPECIALLY DESIGNATED NATIONALS** - Individuals or organizations who act on behalf of the Government of Libya anywhere in the world are considered by the U.S. Treasury Department to be "Specially Designated Nationals" of Libya. Their names are published in the Federal Register, an official publication of the U.S. Government. A listing of such Specially Designated Nationals may be obtained by calling the Office of Foreign Assets Control at 202/622-2420. The listing, however, is a partial one and any U.S. individual or organization engaging in transactions with foreign nationals must take reasonable care to make certain that such foreign nationals are not acting on behalf of Libya. The list includes certain banks domiciled in Europe and Africa as well as the names of individuals who are officers and directors of substantial international corporations. U.S. individuals or organizations who violate the Regulations by transacting business with Specially Designated Nationals of Libya may be subject to civil or criminal prosecution.

■ **LIBYAN GOVERNMENT ASSETS BLOCKED** - On January 8, 1986, the President blocked all Government of Libya assets in the United States or in the possession or control of U.S. persons anywhere in the world. This action prohibits all transfers of Libyan governmental assets without a specific license from the Office of Foreign Assets Control. All contracts, loans, and financial dealings with Libya are prohibited. The freeze covers all properties of the Libyan Government, and of entities owned or controlled by it, including all Libyan-organized and Libyan-owned or controlled banks (all banks in Libya are considered Government-controlled) and includes deposits held in banks in the United States and in U.S. banks' overseas branches. The prohibition against any transfer of property or interest in the property of Libya includes property that is now or in the future is located in the United States or is in or comes into the possession or control of U.S. persons. Any unlicensed funds transfer involving a direct or indirect interest of the Government of Libya (including any transfer routed through or to Libyan banks, all of which are considered to be Specially Designated Nationals of Libya), for which banks subject to U.S. jurisdiction receive instructions, must be deposited into a blocked account on the books of the bank receiving the instructions. Such funds may not be returned to a remitter without a specific license from the Office of Foreign Assets Control. No unlicensed debits may be made to blocked Libyan accounts to pay obligations of U.S. or other persons, whether the obligations arose before or after the sanctions against Libya were imposed. Even payments from blocked accounts for goods, services, or technology exported prior to the sanctions program are prohibited.

■ **FINANCIAL DEALINGS WITH LIBYA** - Financial transactions, including trade financing, are generally prohibited. Payments for and financing of licensed sales of agricultural commodities and products, medicine and medical equipment may be accomplished by cash in advance, sales on

open account (provided the account receivable is not transferred by the person extending the credit), or by third country financial institutions that are neither U.S. persons nor government of Libya entities. Any other arrangements must be specifically authorized by OFAC. U.S. banks may advise and confirm letters of credit issued by third country banks covering licensed sales.

Payments for licensed sales of agricultural commodities and products, medicine and medical equipment, which must reference an appropriate OFAC license, may not involve a debit to a blocked account on the books of a U.S. depository institution. Before a U.S. bank initiates a payment, or credits its customer for a licensed transaction, it must determine that the transfer is authorized.

■ CONTRACTS BENEFITING LIBYA - No U.S. person may perform any contract in support of an industrial or other commercial or governmental project in Libya. The prohibition includes sales or service agreements with non-Libyan persons located anywhere in the world, if it is known that Libya or a Libyan project will benefit from the transaction. Banks subject to U.S. jurisdiction must exercise extreme caution not to operate accounts for even non-U.S. companies which use those accounts for transactions connected with Libyan projects or commercial activities. Any such accounts must be blocked under U.S. law.

■ TRANSACTIONS INVOLVING U.S. SUBSIDIARIES - Independent transactions with Libya by foreign subsidiaries of U.S. firms are permitted if no U.S. person or permanent resident has a role. It should be emphasized that the facilitating actions of the U.S. parent, or of U.S. citizens (wherever resident) who manage or work for the subsidiary, are fully subject to the prohibitions of the Regulations.

■ STANDBY LETTERS OF CREDIT - A number of companies were required to open bid, performance, advance payment, or warranty bonds in the form of standby letters of credit to do business with Libya before the Libyan sanctions were imposed. Special procedures have been established with regard to payment demands under standby letters of credit in favor of Libya. Banks must "give prompt notice" to the party who opened the letter of credit (the account party) when there is an attempted drawing. The

account party then has five days to apply to the Office of Foreign Assets Control for a specific license to prevent "payment" of the letter of credit into a blocked account. A bank may not make any payment, even into a blocked account, on behalf of a Libyan beneficiary unless the account party fails to secure a Treasury license within 10 business days of notification from the bank. If the account party receives a license from the Treasury Department, the original of the license should be presented to the bank and a special blocked reserve account must be established on the account party's corporate books to reflect its outstanding obligation to Libya in lieu of the bank "paying" the letter of credit. The account party must certify to the Treasury Department that it has established the blocked reserve account. Neither the bank nor the account party are relieved from giving any notice of defense against payment or reimbursement that is required by applicable law. Moreover, the issuing bank must continue to maintain the letter of credit as a contingent liability on its own books, despite any reserve account established by the account party and, in the event the embargo is lifted, both the bank and the account party will be expected to negotiate concerning their outstanding obligation.

■ TRAVEL TO LIBYA - All transportation-related transactions involving Libya by U.S. persons are prohibited, including the sale in the United States of any transportation by air which includes any stop in Libya. All travel-related transactions are prohibited for U.S. citizens or residents with regard to Libya, except for (1) travel by close family members of Libyan nationals when the U.S. citizen or resident has registered with Treasury's Office of Foreign Assets Control or with the Embassy of Belgium in Tripoli, (2) travel by journalists regularly employed in such capacity by a newsgathering organization, or (3) travel transactions for the sole purpose of negotiating executory contracts in connection with licensed sales of agricultural commodities and products, medicine, and medical equipment. Travel transactions related to the installation or servicing of medical equipment exported pursuant to OFAC license may be authorized by specific license.

If you have information regarding possible violations of any of these regulations, please call the Treasury Department's Office of Foreign Assets Control at 202/622-2430. Your call will be handled confidentially.

A SUMMARY OF REGULATIONS RELATING TO COMMERCIAL SALES OF FOOD, MEDICINE, AND MEDICAL EQUIPMENT TO IRAN, LIBYA, AND SUDAN

OFAC has taken steps, after close consultation with the Departments of State and Agriculture, to implement the policy announced by President Clinton on April 28 to authorize, with appropriate safeguards, commercial sales of food, medicine and medical equipment under existing unilateral sanctions regimes. This policy affirmed the President's earlier statement that "...food and other human necessities should not be used as a tool of foreign policy except under extraordinary circumstances." The implementation is in the form of regulations amending the current sanctions regimes for Iran, Libya and Sudan in accordance with guidance from the Department of State developed following an interagency process. The new regulations provide that licenses will be issued—on a case-by-case basis and with appropriate safeguards—to allow commercial sales of food, medicine and medical equipment to approved buyers in Iran, Libya and Sudan.

What items are covered under this new policy?

This new licensing policy applies to agricultural commodities and products that are intended for ultimate consumption as food by humans or animals. This includes raw, processed and packaged foods, animal feeds and pet food, live food animals, seeds for food crops, and reproductive materials for the production of food animals. It does not include non-food agricultural commodities, such as cotton or tobacco.

The new licensing policy also applies to medicines, including those administered by injection, and medical equipment, as long as the medicines and medical equipment are not listed on the Commerce Control List, which is a list maintained by the Department of Commerce of goods that are controlled for export to certain countries for reasons of national security, nuclear nonproliferation, anti-terrorism, and so on.

Who are the approved buyers in Iran, Libya and Sudan?

The specific licenses that are issued under this policy will allow sales to:

- private individuals acting for their own account;
- nongovernmental entities; and
- government procurement bodies identified by the Office of Foreign Assets Control as not being affiliated with the coercive organs of the state.

A list of such approved government procurement bodies will be available on OFAC's Web site and from its FAX-on-Demand service and will be provided to each licensee. This list will be updated from time to time, as necessary. In addition, persons applying for specific licenses can propose adding other qualifying government procurement bodies to this list.

What procedures do people have to follow to get a license?

The new regulations set up two different procedures for obtaining specific licenses.

First, there is an expedited licensing procedure for sales of specified bulk agricultural commodities listed in an appendix to the regulations. Licensees under this procedure will receive one license authorizing them to respond to requests for bids, to enter into binding contracts and to perform contracts. Licenses will not be limited to one contract or transaction, but rather will authorize sales of bulk agricultural commodities over a specified time period. Applicants will not have to identify their purchasers or other sales terms, such as price, in advance.

The licenses, however, will be subject to certain conditions. For example:

- all sales must be at prevailing market prices and only to approved purchasers, who must be fully identified in the contracts;
- payment terms must be consistent with the regulations; and
- any applicable license application requirements of another Federal agency must be satisfied.

Second, for sales of all other food items, medicines and medical equipment, the regulations provide a two-step licensing procedure that allows for case-by-case review of each contract. The first step is a general license authorizing entry into executory contracts that make performance contingent upon the prior approval of the Office of Foreign Assets Control. The executory contracts will have to meet the similar criteria to those for bulk agricultural commodity sales contracts and, in addition, will have to disclose up front all parties with an interest in the sale and set forth all the terms of the sale. The second step in this licensing procedure is for the prospective seller to apply to OFAC for a specific license permitting performance of the executory contract. The applicant will have to submit the executory contract to OFAC, as well as any other information necessary to demonstrate that all applicable requirements have been met. No contract performance is permitted until OFAC issues a specific license.

What types of payment terms and financing will be allowed for these sales?

Certain payment and financing terms for sales licensed under the new policy are authorized by a general license. The generally licensed payment and financing terms are limited to:

- cash in advance;
- sales on open account, with the proviso that the account receivable may not be transferred by the person extending the credit; or
- financing by third-country banks that are neither U.S. persons nor Iranian, Libyan or Sudanese government entities.

U.S. banks may advise or confirm letters of credit issued by third-country banks.

In addition, OFAC will consider applications for specific licenses to authorize other terms for payment and financing where compliance with the overall sanctions regime would not be undermined. Payments for licensed sales—which must reference an appropriate OFAC license—may not involve a debit to a blocked account, or a debit or credit to an account of a person in Iran or of the Government of Iran maintained on the books of a U.S. depository institution. In order to ensure that payments are not blocked or rejected, persons sending or receiving them should be certain that their transfer instructions reference the underlying OFAC license authorizing their transaction and ought to be prepared to show their bank a copy of their license.

There will be no U.S. Government funding or financing in support of these sales.

Incidental transactions and brokering

The regulations also contain a general license authorizing, with some limitations, transactions ordinarily incident to a licensed transaction, such as shipping, insurance and payment of port fees. Since travel to Libya is currently prohibited, a separate section authorizes travel transactions to, from and within Libya for the sole purpose of negotiating contracts authorized by the general license for entry into executory contracts or by specific licenses for bulk agricultural commodity sales. U.S. passports must be validated by the Department of State for travel to Libya.

Finally, there is a provision in the new regulations authorizing U.S. persons, on certain conditions, to broker the sale by third parties of bulk agricultural commodities to approved buyers in Iran, Libya and Sudan. Where the underlying sale is by a U.S. person and must be specifically licensed, brokering is permitted by general license. Where the underlying sale is a third country sale and is not subject to OFAC licensing requirements, a U.S. person must apply for a specific license to broker the sale.

July 26, 1999

This document is explanatory only and does not have the force of law. The Executive Orders and implementing regulations relating to Libya contain the legally binding provisions governing the sanctions and this document does not supplement or modify those Executive Orders or regulations.

The Office also administers sanctions programs involving Iraq, the Federal Republic of Yugoslavia, the Republic of Serbia, North Korea, Cuba, the National Union for the Total Independence of Angola (UNITA), the Taliban in Afghanistan, Iran, Syria, Sudan, Burma (Myanmar), designated international terrorists and narcotics traffickers, Foreign Terrorist Organizations, and designated foreign persons who have engaged in activities relating to the proliferation of weapons of mass destruction. For additional information about these programs or about the Libyan Sanctions Regulations, please contact the:

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